



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-105, Employees distinguished from persons engaged in business**

Date last reviewed: **January 13, 1999**

Reviewer: **Gilbert Brewer**

Date current review completed: **October 22, 2002**

Briefly explain the subject matter of the document(s):

**WAC 458-20-105 explains that persons engaging in business are taxable under the Revenue Act and identifies conditions that indicate whether a person is an employee or engaging in business. The rule specifically discusses conditions that relate to a life insurance salesperson, operator of rented or owned equipment, casual laborer, and booth renter.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>X</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	<b>X</b>	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	<b>X</b>	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document



		Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**ETA 90-001, A Statement of Purpose and Intent with Respect to Issues Involving Employee Placement Businesses and Their Clients -- the previous reviewer suggested that ETA 90-001 should be incorporated into a separate rule. I think that it might be possible to incorporate this material into Rule 105 under a separate subsection in the same manner as Rule 105 presently treats insurance salespersons, operators of rented equipment, casual laborers, and booth renters. This approach would maintain the related provisions under a single rule. I would try to write the revised rule in this manner first. If this approach did not work well, then I would create a separate rule as recommended by the prior reviewer with cross-references between the rules.**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

**RCW 82.04.394 -- exempts amounts received by a property management company from the owner of a property for wages/benefits paid to a qualifying person who maintains the property in question**



Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 99-119, 19 WTD 249 (2000) -- taxpayer failed to provide records or other evidence sufficient to carry burden of proof that he was an employee, not an independent contractor**
- **Det. No. 99-218R, 20 WTD 240 (2001) -- taxpayer was found to have acted as a contractor who employed a subcontractor to meet its contractual obligations; taxpayer could not demonstrate that it met *Rho/ETA 90-001* factors**
- **Det. No. 99-013, 20 WTD 471/Det. No. 99-013R, 20 WTD 481 (2001) -- when evaluating a business arrangement for a possible advance/reimbursement claim, the *Rho/ETA 90-001* factors do not negate the first two elements of Rule 111. *Rho/ETA 90-001* comes into play when determining who the employer is so that Rule 111 can be applied in the context of a personnel placement agency**
- **Det. No. 00-206E, 21 WTD 66 (2002) -- business that provides temporary workers to other businesses and which has "pervasive control" over the workers under the ETA 90-001 criteria is treated as employer of the workers**
- **Det. No. 00-094, 21 WTD 58 (2002) -- the more specific provisions of Rule 127 take precedence over Rule 105 in determining whether door-to-door salesmen or distributors of magazines were liable for sales tax remittances on magazine subscription sales**

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

## 5. Review Recommendation:

- \_\_\_\_\_ **Amend**
- \_\_\_\_\_ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- X**   **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.



If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**There is no need to revise Rule 105 at this time. Whenever this rule is next revised I generally agree with the prior reviewer's recommendations, with the possible exception of whether ETA 90-001 should be incorporated into Rule 105 or broken out into a separate rule (as discussed above).**

**6. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

- \_\_\_\_\_ 1
- \_\_\_\_\_ 2
- \_\_\_\_\_ 3
- \_\_\_\_\_ 4